

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	No. 26291-0-III
)	(consolidated with
Respondent,)	No. 26679-6-III)
)	
v.)	
)	Division Three
FRANCISCO HINOJOSA)	
SANCHEZ,)	
)	
Appellant.)	UNPUBLISHED OPINION

Korsmo, J. — This court previously affirmed Mr. Francisco Sanchez’s conviction for delivery of cocaine and accompanying enhancement for the offense having occurred within 1,000 feet of a school bus stop. He *pro se* filed a petition for review claiming that he was sentenced under an incorrect standard range. The Washington Supreme Court remanded the case for consideration of the sentencing issue. The argument is utterly without merit. We again affirm the conviction and we also deny appellant’s motion for immediate release from custody.

No. 26291-0-III (consolidated with
No. 26679-6-III)
State v. Sanchez

FACTS

Mr. Sanchez committed the offense in 2000, but was not sentenced until 2007 because he jumped bail.¹ The trial court imposed a top-end sentence of 27 months, plus a 24-month enhancement for the school bus stop finding, for a total sentence of 51 months. The court also imposed the required 9-12 month term of community custody. Clerk's Papers (CP) 16-23.

Mr. Sanchez appealed and was appointed counsel. The parties briefed the case, with counsel challenging the propriety of closing argument. Mr. Sanchez filed a *pro se* statement of additional grounds, which this court considered but did not address in its opinion upholding the conviction. A *pro se* petition for review followed. The Supreme Court remanded the case for consideration of the sentencing issue raised by the *pro se* petition. We requested the parties to file supplemental briefs on the issue.

Mr. Sanchez then moved for accelerated review and immediate release from custody. Our Commissioner referred that motion to the panel considering the case on remand.

¹ He was charged with bail jumping and pleaded guilty to that offense.

No. 26291-0-III (consolidated with
No. 26679-6-III)
State v. Sanchez

ANALYSIS

There are now two different theories being argued by Mr. Sanchez. Both are without merit. We will review each approach in turn.

The petition for review argued that the correct sentencing range was 15-20 months and that the trial court had exceeded its authority in sentencing Mr. Sanchez to 51 months. The petition alleged that the sentencing laws in effect in 2000 required the noted range.

When the supplemental briefs were filed, petitioner augmented his theory. He still contended that the range was actually 15-20 months, but argued that *Blakely v. Washington*, 542 U.S. 296, 159 L. Ed. 2d 403, 124 S. Ct. 2531 (2004) precluded a sentence of 51 months in custody plus 12 months of community supervision. His theory was that the standard range had to include the sentencing enhancement and that the incarceration plus supervision components of the sentence could not exceed the supposed standard range. *See* Appellant's Supplemental Brief. In other words, he contended that all three applicable sentencing components were limited to the unenhanced range established by the Legislature.

The actual, unenhanced standard range for delivery of cocaine with an offender score of 0 in 2000 was 21-27 months.² Delivery of cocaine was a level VIII offense at

No. 26291-0-III (consolidated with
No. 26679-6-III)
State v. Sanchez

that time. Former RCW 9.94A.320 (2000). The standard range for a level VIII offense with an offender score of 0 was 21-27 months. Former RCW 9.94A.310 (2000).³ In addition, the sentencing enhancement for delivering a controlled substance near a school bus stop was 24 months. Former RCW 9.94A.310(6) (2000). When dealing with a sentencing enhancement, a court is required to add the enhancement period to both ends of the basic, unenhanced standard range, to obtain the new standard range. *In re Post Sentencing Review of Charles*, 135 Wn.2d 239, 253-254, 955 P.2d 798 (1998).

The trial court followed the procedure in this case. It correctly determined that the unenhanced base range was 21-27 months and that adding the enhancement resulted in a standard range of 45-51 months. It then imposed a standard range sentence of 51 months. CP 16-23. The court also imposed a 9-12 month term of community supervision as required by former RCW 9.94A.120 (2000).

This was entirely proper and was entirely justified by the jury's verdicts. Nothing in this process implicated *Blakely v. Washington* in the least. That case limited trial judges to sentencing within the factual ranges reflected by the jury's verdict. That is

² In fact, Mr. Sanchez should have had an offender score of one because he pleaded guilty to the bail jumping charge on the same day he was sentenced on the cocaine delivery conviction. *See* former RCW 9.94A.360(1), (5) (2000).

³ The range for a level VII offense, with a score of 0, was 15-20 months. Former RCW 9.94A.310 (2000). Mr. Sanchez may have misread the sentencing chart when preparing his argument.

No. 26291-0-III (consolidated with
No. 26679-6-III)
State v. Sanchez

what happened here. The relevant ranges have been previously noted. Delivery of cocaine was (and is) a Class B felony. RCW 69.50.401(2)(a). A Class B felony is subject to a maximum sentence of 10 years in prison. RCW 9A.20.021(1)(b). The jury's two verdicts authorized the standard range of 45-51 months. The jury's finding that Mr. Sanchez delivered cocaine also triggered the term of community custody. The jury's two verdicts justified each of the sentencing components about which Mr. Sanchez now complains. The combined total of 63 months of potential incarceration plus supervision is well within the 120-month maximum sentence. There was no *Blakely* error. *State v. Toney*, 149 Wn. App. 787, 795, 205 P.3d 944 (2009).

The fundamental flaw in Mr. Sanchez's argument is the premise that *Blakely* redefined the concept of a statutory maximum sentence to the top end of the standard range. As many cases have recognized, that is not true. *Id.* at 793-796. Instead, the maximum sentence remains that specified by the Legislature in chapter 9A.20 RCW. *Id.* at 796.

Mr. Sanchez has identified no prejudicial sentencing error in his case. The judgment and sentence are again affirmed.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW

No. 26291-0-III (consolidated with
No. 26679-6-III)
State v. Sanchez

2.06.040.

Korsmo, J.

WE CONCUR:

Schultheis, C.J.

Brown, J.